

No. 1-09-2329

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 90 CR 9799
)	
ANTHONY ROBINSON,)	Honorable
)	Joseph M. Claps,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Gallagher and Justice Lavin concurred in the judgment.

ORDER

HELD: Where defendant was represented by counsel during postconviction proceedings, the trial court was not required to admonish him before recharacterizing his pleading as a postconviction petition.

Defendant Anthony Robinson appeals from an order of the trial court granting the State's motion to dismiss his petitions for post-judgment relief, which the trial court recharacterized as claims for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)). On appeal, defendant contends that the cause must be remanded because neither the trial court nor appointed postconviction counsel admonished him of the consequences of

recharacterization, as required by *People v. Shellstrom*, 216 Ill. 2d 45 (2005) and *People v. Pearson*, 216 Ill. 2d 58 (2005) (collectively "*Shellstrom* admonitions"). We affirm based on the recent supreme court decision in *People v. Stoffel*, No. 108500 (Ill. Dec. 23, 2010), which held that the *Shellstrom* admonitions do not apply where the defendant is represented by counsel.

Following a jury trial in 1992, defendant was convicted of armed robbery and sentenced to life imprisonment under the Habitual Criminal Act (720 ILCS 5/33B-1 *et seq.* (West 1992)). We affirmed the judgment on direct appeal, rejecting defendant's claims that the Habitual Criminal Act was unconstitutional and that the State failed to meet its burden of proving that he was a habitual criminal under that statute. *People v. Robinson*, 268 Ill. App. 3d 1019, 1025-31 (1994).

In January 2001 and November 2002, defendant, acting *pro se*, filed the petitions at issue in this appeal. Both petitions were brought pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2002)), and challenged the constitutionality of the Habitual Criminal Act and the sufficiency of the evidence showing that defendant was subject to sentencing as a habitual criminal. The trial court appointed counsel to represent defendant on the petitions, the State filed motions to dismiss them, and the cause was continued several times, mainly to locate transcripts.

At various hearings in 2008 and 2009, the parties and the court discussed the nature of defendant's claims for relief and whether or not they should be recharacterized as petitions under the Post-Conviction Hearing Act. The trial court held the view that before recharacterization could occur, the court would have to give defendant the *Shellstrom* admonitions. Those admonitions are intended to warn *pro se* litigants of the dangers of recharacterizing a differently-labeled pleading as a petition under the Act, including that any claims not raised in the petition may be waived and that subsequent petitions would be required to meet the cause-and-prejudice

test attendant to successive petitions. See *Shellstrom*, 216 Ill. 2d at 55-57. At a hearing on September 17, 2008, defendant informed the court that he wanted his petitions treated as postconviction petitions. When the court sought to clarify defendant's request, postconviction counsel interjected that she told defendant he would likely be admonished about recharacterization and that she had started to explain the "nuances" of the process but had not completed the discussion. After some further discussion, the cause was again continued.

In a hearing in July 2009, the State argued its motion to dismiss, asserting that defendant's claims were untimely, meritless, and barred by *res judicata*. Postconviction counsel argued that defendant's initial *pro se* pleadings had been recharacterized as a postconviction petition, addressed the timeliness issue, and stated that she had filed a certificate of compliance with Supreme Court Rule 651 (c) (eff. Dec. 1, 1984). Counsel represented that defendant's petition adequately stated his claims and that no amendments were warranted.

In a written order dated August 20, 2009, the court granted the State's motion to dismiss. The order stated that defendant's *pro se* petitions had been recharacterized as a claim under the Post-Conviction Hearing Act. The court then addressed defendant's challenges to the Habitual Criminal Act and concluded that they were procedurally barred and without merit.

In this appeal, defendant does not argue that his petition had substantive merit. Instead, he attacks only the procedure followed by the trial court in dismissing the petition. Defendant faults both the trial court and postconviction counsel for failing to provide the *Shellstrom* admonitions and asks that the cause be remanded for that purpose.

Under *People v. Shellstrom*, 216 Ill. 2d 45, 57 (2005), before a trial court may recharacterize a *pro se* pleading as a postconviction petition, it must admonish the defendant that it intends to recharacterize the pleading and that any subsequent petition would be subject to the restrictions on successive petitions. The court must also provide the defendant with an

opportunity to withdraw the *pro se* pleading or amend it to include all the claims that he believes he has. In *People v. Stoffel*, No. 108500, slip op. at 12 (Ill. Dec. 23, 2010), the supreme court clarified that the admonition requirement applies only to *pro se* litigants and that where "counsel is appointed to represent the defendant, *Shellstrom* admonitions are unnecessary." This is because where counsel is appointed, it is counsel's duty to consult with defendant and amend the petition, if necessary, to include all of his claims. *Stoffel*, slip op. at 12.

Stoffel is dispositive of this appeal. Because defendant was represented by counsel, the trial court was not required to admonish him before recharacterizing his *pro se* pleadings as a postconviction petition. Also, appointed counsel was not required to admonish defendant, but rather to represent him by performing the duties required by Supreme Court Rule 651(c). Counsel filed the certificate of compliance required by that rule, and the record supports counsel's assertions that she consulted with defendant, reviewed the record, and concluded that the *pro se* petition adequately presented defendant's claims without being amended. As stated above, defendant does not argue that his claims concerning the Habitual Criminal Act have merit and does not suggest how the petition could have been amended to make it viable.

Accordingly, the judgment of the circuit court is affirmed.

Affirmed.